

Ebon Services, Inc. and Production, Service and Allied Workers Union, Local 143 Ind. Case 22-CA-15768

April 8, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 12, 1990, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Ebon Services, Inc. to make whole certain of its unit employees and Production, Service and Allied Workers Union, Local 143 Ind., the Union, for loss of earnings and other benefits resulting from its failure to execute the agreement with the Union in violation of the National Labor Relations Act. On August 28, 1991, the United States Court of Appeals for the Third Circuit entered a judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees, on December 31, 1992, the Regional Director for Region 22 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated February 2, 1993, the Regional attorney advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 9, 1993, summary judgment would be sought. The Respondent filed no answer.

On March 8, 1993, the General Counsel filed with the Board a Motion to the Board for Summary Judgment and memorandum in support, with exhibits attached. On March 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

¹ 298 NLRB 219.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees, and the amounts owing the Union's Funds, are as stated in the compliance specification and we will order payment by the Respondent to the discriminatees and the Funds.

ORDER

The National Labor Relations Board orders that the Respondent, Ebon Services, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall make whole the employees and the Union, including all contractual contributions to the Union's Funds, by paying the amounts set forth in the compliance specification, with interest on the backpay owed the discriminatees to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less any tax withholdings as required by Federal, state, and municipal laws that may be due from the backpay owed the discriminatees.